

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ST. PAUL CITY COUNCIL

In the Matter of All Licenses Held
By Cab's Pub & Eatery, Inc., for the
Premises Located at 992 Arcade Street,
St. Paul, Minnesota.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on June 12, 2003, in St. Paul. The record closed at the end of the hearing that day.

Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, Minnesota 55102, appeared for the Office of License, Inspections and Environmental Protection (LIEP).

John McGrew, General Manager, Cab's Pub & Eatery, Inc., 922 Arcade Street, St. Paul, Minnesota 55106, appeared for the licensee without counsel.

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation. Under St. Paul Legislative Code § 310.05(c-1), the City Council shall provide the licensee an opportunity to present oral or written arguments alleging error in the application of the law or the interpretation of the facts and to present argument related to the recommended adverse action contained in this Report. Parties should contact Virginia Palmer at the address above to learn the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Should action be taken against the licenses held by Cab's Pub & Eatery because it allowed the after-hours display and consumption of alcohol in violation of St. Paul Legislative Code § 409.07(c)?

The Administrative Law Judge concludes that the licensee did allow the display and consumption of alcohol after hours and that an adverse licensing action is justified.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The St. Paul LIEF Office has an unwritten policy that is well known to liquor licensees and the police department.^[1] Although state law and city ordinance prohibit the sale^[2] and display or consumption of alcohol^[3] after 1:00 a.m., the Office requires only that licensees stop serving alcohol by 1:00 a.m.; licensees have another half hour, until 1:30 a.m., to clear customers from the premises and ensure that no alcohol is being consumed or displayed.^[4] The only issue in this case is whether the officers entered the bar before 1:30 a.m., as alleged by Cab's employees, or after 1:30 a.m., as alleged by the police officers.

2. Cab's Pub & Eatery has an on-sale liquor license from the City of St. Paul. On Thursday nights there is often a band playing at Cab's, and it is usually a busy night.

3. On Thursday, March 14, 2003, Sgt. Tina McNamara drove past Cab's between midnight and 12:30 a.m. and noticed that there were cars parked on the sidewalks bordering the establishment. She contacted parking enforcement officers to cite the illegally parked cars.^[5]

4. At approximately 1:30 a.m., Sgt. McNamara drove past Cab's again and noticed that there were still a number of cars parked outside the bar. She contacted another patrol unit for assistance. Officers Murphy and Farrington met her there within a few minutes, at approximately 1:37 a.m. Because the exterior doors were locked, the officers waited outside until someone opened a door to leave the bar. When several people left through the Jenks Street door, the officers entered. The time was 1:41 a.m. as they went through the door.^[6]

5. Two men were at the bar, one of whom was drinking beer from a plastic cup.^[7] Neither man was an employee of Cab's. The men told the officers that they were not employees but were waiting for a waitress named Julie Austad to give them a ride home after she finished work. There was also a Bloody Mary (containing alcohol) on the bar, and Austad told the officers that the drink was hers.^[8]

6. Sgt. McNamara asked to speak to the person in charge, whose name is Renee Magee. When the officers had entered the bar, Magee had been downstairs locking up the till and punching out.^[9] Magee punched out at 1:39 a.m. on March 14.^[10] When she came upstairs, she saw the officers, who informed her that there was to be no alcohol served, consumed or on the bar and that no patrons were allowed in the bar after 1:30 a.m. Although the employees made several comments to the effect that the police officers should have better things to do with their time, no one contended that it was not yet 1:30 a.m. The employees did not inform their manager, John McGrew, about this incident until two days later.

7. On April 22, 2003, the LIEP Office issued a Notice of Violation to Cab's Pub & Eatery, informing the owner of the nature of the violation, the proposed fine (\$500), and the opportunity to request a hearing.^[11]

8. On April 28, 2003, the general manager of Cab's notified counsel for the LIEP Office that he disputed the times alleged in the Notice of Violation. He also maintained that the Bloody Mary had no alcohol in it and that the beer was not being consumed by a customer but was being cleared off a table by an off-duty employee.^[12]

9. On May 9, 2003, the City Attorney's office issued the Notice of Hearing.

10. At the commencement of the hearing, counsel for the LIEP office stated that she would seek to recover the costs of the contested case hearing pursuant to St. Paul Legislative Code § 310.05(k), in addition to the civil penalty, because in her view the position asserted by the licensee was frivolous.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 340A.415 and St. Paul Legislative Code § 310.05.

2. The City of St. Paul gave proper notice of the hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. As the party proposing that certain action be taken, the City has the burden of proving facts at issue by a preponderance of the evidence.^[13]

4. State law and St. Paul ordinance both prohibit the sale of intoxicating liquor between the hours of 1:00 a.m. and 8:00 a.m. on any weekday.^[14] In addition, a local authority may impose further restrictions and regulations on the sale and possession of alcoholic beverages within its limits.^[15] Pursuant to this authority, the St. Paul Legislative Code further provides that no person shall consume or display or allow consumption or display of liquor upon the premises of an on-sale licensee at any time when the sale of such liquor is not permitted.^[16]

5. Based on a finding that a license holder has failed to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages, the commissioner of the Department of Public Safety or the authority issuing a retail license may revoke the license, suspend the license for up to 60 days, impose a civil penalty of up to \$2,000 for each violation, or impose any combination of these sanctions.^[17]

6. The St. Paul Legislative Code provides that for a first violation, the sanction for after-hours display or consumption of an alcoholic beverage is a fine in the amount of \$500.^[18] The council may deviate from this penalty in an individual case where the

council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so.^[19]

7. There are no substantial or compelling reasons in the record to justify a deviation from the presumptive penalty in this case.

8. A fine in the amount of \$500 as a sanction for after-hours display or consumption of alcohol is consistent with the authority granted by Minn. Stat. § 340A.415.

9. The licensee's position, claim, or defense in this proceeding was not frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment. The costs of the hearing should not be imposed on the licensee pursuant to Section 310.05(k) of the St. Paul Legislative Code.

Based upon the above Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the St. Paul City Council take appropriate action against the license of Cab's Pub & Eatery.

Dated this 23rd day of June, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape recorded (three tapes)

NOTICE

The St. Paul City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

As noted above, the main dispute in this case is whether the police officers entered the bar at 1:15 or 1:20 a.m., as testified to by the employees present that night, or at approximately 1:41 a.m., as testified to by the police officers. The main evidence supporting the licensee's position is the timecards reflecting the times when the employees punched out that morning. Julie Austad, the waitress, punched out at 1:24 a.m.^[20] She testified first that she poured herself a Bloody Mary after she punched out, but did not have time to drink any of it before the officers entered. She also testified that she must have poured the drink before she punched out, because she thought she

punched out after the officers arrived, and there is no dispute that the drink was on the bar when the officers arrived. Although the Administrative Law Judge believes that Austad was genuinely confused about the events of the evening, her first version of events, that she made the drink after she punched out and before the officers arrived, supports the officers' position that they entered after 1:30 a.m.

The bartender and manager, Renee Magee, testified that the officers had not yet arrived when she brought the till downstairs to lock it up. She said she punched out, and when she got upstairs the officers were waiting to talk to her. Her timecard shows that she punched out at 1:39 a.m. that morning.^[21] She, and apparently the general manager, misread the timecard and believed that it showed she punched out at 1:26 a.m.; however, the timecard clearly shows that this entry was for the following day, March 15, not March 14 as they asserted.

In contrast to the testimony of the employees, the police officers testified consistently with each other, with their reports, and with the police communications tape that they met outside the bar at 1:37 a.m. and entered the bar at 1:41. The Administrative Law Judge believes their testimony was more accurate and reliable.

Although there was some confusion mixed with wishful thinking and a dash of bar time vs. real time in the testimony of the employees, the Administrative Law Judge does not believe that any of them deliberately misrepresented their recollections of the time. The licensee's reliance on their testimony was not frivolous, arbitrary, in bad faith, or for the purpose of delay or harassment, and the licensee should not be required to pay the costs of the hearing.

K.D.S.

^[1] Testimony of John McGrew.

^[2] Minn. Stat. § 340A.504, subd. 2..

^[3] St. Paul Legislative Code § 409.07(c).

^[4] Testimony of John McGrew.

^[5] Testimony of Sgt. McNamara; Ex. 1.

^[6] Testimony of Sgt. McNamara; Ex. 2 (police communications tape).

^[7] Testimony of Officer Farrington, Officer Murphy.

^[8] *Id.*

^[9] Testimony of Renee Magee.

^[10] Ex. 7 (timecard).

^[11] Ex. 4. Cab's Pub & Eatery has no previous violations of this type.

^[12] Ex. 5.

^[13] Minn. R. 1400.7300, subp. 5.

^[14] Minn. Stat. § 340A.504, subd. 2; St. Paul Legislative Code § 409.07(a).

^[15] Minn. Stat. § 340A.509.

^[16] *Id.* § 409.07(c).

^[17] Minn. Stat. § 340A.415.

^[18] St. Paul Legislative Code § 409.26(a), (b).

^[19] *Id.* § 409.26(a).

^[20] Ex. 8.

^[21] Ex. 7.